



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-R-

DATE: OCT. 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an seeks to classify the Beneficiary as an individual of exceptional ability under the second-preference, immigrant category to perform services as a regional division manager. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based category allows U.S. businesses to sponsor foreign nationals for lawful permanent resident status if they have a degree of expertise significantly above that normally encountered in the sciences, arts, or business or an academic degree above a baccalaureate. The Petitioner also seeks Schedule A, Group II designation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary intends to practice in the “sciences or art” pursuant to the United States Department of Labor’s (DOL) regulations.

On appeal, the Petitioner asserts that the duties of the offered position fall under the regulatory definition of “sciences or art.”

Upon *de novo* review, we will withdraw the decision of the Director and remand this matter for further proceedings consistent with the foregoing opinion and for entry of a new decision.

I. LAW

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2) of the Act. An advanced degree is one above a baccalaureate.¹ 8 C.F.R. § 204.5(k)(2). Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. *Id.* Every petition under this classification must include one of the following three items: (1) an ETA Form 9089 from the Department of Labor, (2) an application for Schedule A designation, or (3) documentation to

¹ The definition of advanced degree also includes a baccalaureate followed by at least five years of progressive experience. 8 C.F.R. § 204.5(k)(2).

establish that the beneficiary qualifies for one of the shortage occupations in the Department of Labor's Labor Market Information Pilot Program. 8 C.F.R. § 204.5(k)(4)(i).

Schedule A, Group II designation requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in the field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must satisfy at least two of seven criteria (for example awards, memberships, published material, and contributions). 20 C.F.R. § 656.15(d)(1)((i)-(vii)).² In addition to verifying widespread acclaim and international recognition, the documentation presented must show that the beneficiary worked for the past year in a position that requires an individual of exceptional ability and that the beneficiary's services are sought for a position that requires an individual of exceptional ability. 20 C.F.R. § 656.15(d)(1). As with most filings for an employment-based immigrant that requires a job offer, this petition must include evidence that the prospective United States employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The sole ground for denial in the Director's decision was that the duties of the offered position did not fall under the "sciences or arts" as required under the Schedule A Group II regulations. Specifically, 20 C.F.R. § 656.5(b)(1) states the following:

- (1) Sciences or arts (except performing arts). Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation.

In his decision, the Director found that the duties included in the position of regional division manager did not involve working in the sciences or arts, and that "managing a division of engineers does not constitute the beneficiary's own work in the sciences." However, we note that the above regulation indicates that the term "science or art" is construed broadly, and that the duties of the offered position can be classified under the fields of marketing, management and/or business, fields of knowledge which are commonly offered for study in college and university courses leading to a degree. In addition, although not addressed by the Director in his decision, we note that the regulation at 8 C.F.R. § 204.5(k)(1) specifies that exceptional ability may be shown in the sciences, arts, or business. Therefore, for the purposes of both sets of regulations, the proposed position falls under a qualifying field.

² In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

As the Director did not properly consider the Beneficiary's eligibility as an alien of exceptional ability under the Schedule A, Group II regulations or under those for the second preference immigrant visa classification, we are remanding for him to conduct a complete analysis under both.

III. CONCLUSION

We are remanding the petition for the Director to determine whether the record demonstrates that the Beneficiary qualifies as an alien of exceptional ability in the field of business under the Schedule A, Group II regulations, and that the Petitioner and Beneficiary otherwise meet all Schedule A requirements as well as those of the requested second preference immigrant visa classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.

Cite as *Matter of K-R-* , ID# 4340279 (AAO Oct. 2, 2019)